

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:24-cv-00114-MR**

QUAMAIN MASSEY,)	
)	
Plaintiff,)	
)	
vs.)	
)	
ROBERT T. BARKER, et al.,)	<u>ORDER</u>
)	
Defendants.)	
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THIS MATTER is before the Court on initial review of the Plaintiff’s pro se Complaint [Doc. 1]. The Plaintiff is proceeding in forma pauperis. [Doc. 4].

I. BACKGROUND

The pro se incarcerated Plaintiff filed this action pursuant to 42 U.S.C. § 1983 addressing incidents that allegedly occurred at the Marion Correctional Institution. [Doc. 1]. The Plaintiff names as Defendants in their individual capacities: Robert T. Barker, a disciplinary hearing officer (DHO); Curtis Tate, a unit manager; FNU Napier, a correctional officer; and Peter Buchholtz, the “Director, Prisons Appeals.” [Id. at 1-3]. He describes his claims as: “Disciplinary proceedings Indifference to Unjustified Segregation.” [Id. at 3]. He alleges, in pertinent part, as follows:

On 3-13-24 DHO Robert Barker found me guilty of a assault that I didn't do. As on report ISSR154 pg 1-3 Officer Napier states Napier struck her elbow on the 'wall' beside the door. Then Napier states that the 'doorjam' which is already two false reports that didn't match to the first report. Then Napier stated that I struck her with my 'check' which that is impossible. Besides I had on full restraints legs and hands with a black box on to the back so that I could have not assaulted anyone... I was suppose to be released off seg on May 12, 24 and from prison on 7-2-24... On 3-13-2024 I appealed the verdict of Robert Barker to the Director of prisons Peter Buchholtz. ISSR158.

And this violation of my due process disciplinary proceedings was approved by Curtis Tate the Unit Manager where it occurred. And whom unit where I'm suffering unjustified segregation.

[Id. at 5-6] (errors uncorrected). For injury, he claims "mental distress 6 months lock-up time as I suppose to be getting released from prison on 7/2/2024."¹ [Id. at 6]. He seeks \$1 million in damages. [Id.].

II. STANDARD OF REVIEW

Because the Plaintiff is proceeding in forma pauperis, the Court must review the Complaint to determine whether it is subject to dismissal on the grounds that it is "frivolous or malicious [or] fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2). Furthermore, under § 1915A the Court must conduct an initial review and identify and dismiss the

¹ It does not appear that the Plaintiff is seeking to challenge the duration of his confinement. Any attempt to do so would not be proper in this § 1983 action. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

complaint, or any portion of the complaint, if it is frivolous, malicious, or fails to state a claim upon which relief may be granted; or seeks monetary relief from a defendant who is immune to such relief. 28 U.S.C. § 1915A.

In its frivolity review, this Court must determine whether a complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989). Furthermore, a pro se complaint must be construed liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the liberal construction requirement will not permit a district court to ignore a clear failure to allege facts in his Complaint which set forth a claim that is cognizable under federal law. Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990).

III. DISCUSSION

To state a claim under § 1983, a plaintiff must allege that he was deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed by a “person” acting under color of state law. See 42 U.S.C. § 1983; Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 (1999); Health & Hosp. Corp. of Marion Cnty. v. Talevski, 599 U.S. 166 (2023).

The Plaintiff's claim appears to be barred by Heck v. Humphrey, 512 U.S. 477 (1994). In Heck, the United States Supreme Court held as follows:

[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction and sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

Id. at 485-87 (footnotes omitted). In Edwards v. Balisok, 520 U.S. 641 (1997), the Supreme Court extended the Heck rule to claims alleging constitutional deficiencies in prison disciplinary proceedings that have resulted in the loss of good time credits.

Here, if the Plaintiff were to prevail on his claim that the disciplinary charge was unfounded, that would necessarily imply the invalidity of the disciplinary conviction. See, e.g., Edwards, 520 U.S. at 646-47 (plaintiff's claims that he was denied the opportunity to put on a defense and that there

was deceit and bias by the hearing officer would necessarily imply the invalidity of the disciplinary proceedings); Moskos v. Hardee, 24 F.4th 289 (4th Cir. 2022) (prisoner could not bring § 1983 due process claim that prison officials fabricated evidence so that plaintiff would be wrongfully convicted of prison disciplinary infractions, causing him to lose good-time credits, because the disciplinary conviction had not been invalidated). The Plaintiff, however, has not alleged that the disciplinary conviction has been reversed or otherwise invalidated. Therefore, the Plaintiff's claim appears to be barred by Heck.

The Plaintiff's allusion to a due process violation in the disciplinary proceeding is completely unsupported by any factual allegations and fails to satisfy the most basic pleading requirements. See Fed. R. Civ. P. 8(a)(2) (requiring a "short and plain statement of the claim showing that the pleader is entitled to relief"); Simpson v. Welch, 900 F.2d 33, 35 (4th Cir. 1990) (conclusory allegations, unsupported by specific allegations of material fact are not sufficient); Dickson v. Microsoft Corp., 309 F.3d 193, 201-02 (4th Cir. 2002) (a pleader must allege facts, directly or indirectly, that support each element of the claim). Therefore, to the extent that the Plaintiff intended to assert a violation of his due process rights, it is dismissed without prejudice.

IV. CONCLUSION

For the foregoing reasons, the Court concludes that Plaintiff's Complaint fails initial review and will be dismissed without prejudice. The Court will allow Plaintiff thirty (30) days to amend his Complaint, if he so chooses, to properly state a claim upon which relief can be granted, in accordance with the terms of this Order. Any amended complaint will be subject to all timeliness and procedural requirements and will supersede the Complaint. Piecemeal amendment will not be permitted. Should the Plaintiff fail to timely amend his Complaint in accordance with this Order, the Court will dismiss this action without further notice.

ORDER

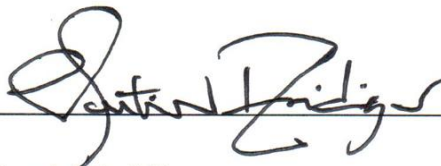
IT IS, THEREFORE, ORDERED that:

1. The Complaint [Doc. 1] is **DISMISSED WITHOUT PREJUDICE**.
2. The Plaintiff shall have **thirty (30) days** in which to amend his Complaint in accordance with the terms of this Order. If Plaintiff fails to so amend his Complaint, this case will be dismissed and closed without further notice.

The Clerk is respectfully instructed to mail the Plaintiff a blank § 1983 prisoner complaint form and a copy of this Order.

IT IS SO ORDERED.

Signed: July 30, 2024



Martin Reidinger
Chief United States District Judge

